



DEPARTMENT OF STATE

Washington, D.C. 20520

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76-7291/2

NSC UNDER SECRETARIES COMMITTEE

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NSC-U/DM-109K

May 26, 1976

TO: The Deputy Secretary of Defense
The Assistant to the President for
National Security Affairs
The Director of Central Intelligence
The Chairman of the Joint Chiefs of Staff
The Deputy Secretary of the Treasury
The Deputy Attorney General
The Under Secretary of Commerce
The Under Secretary of the Interior
The Under Secretary of Transportation
The Director, Office of Management and
Budget
The Chairman, Council on Environmental
Quality
The Director, National Science Foundation
The Chairman, Council of Economic Advisers
The Administrator, Environmental Protection
Agency
The Director, United States Information
Agency
The Administrator, Federal Energy
Administration
The Director, Agency for International
Development
The Acting Executive Director, Council on
International Economic Policy

SUBJECT: Report of the US Delegation to the New
York Session of the Third United Nations
Conference on the Law of the Sea

The Acting Chairman has forwarded the attached memorandum to the President. A copy is provided for your information.

State Department review completed.
Referral to NSC not required.


Rutherford M. Poate
Acting Staff Director

Attachment:

As stated

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May 26, 1976

MEMORANDUM FOR THE PRESIDENT

Subject: Report of the US Delegation to the
New York Session of the Third United
Nations Conference on the Law of the Sea

The March 15 - May 7 New York session of the Law of the Sea Conference concluded with the issuance by the Conference leadership of a revised Single Negotiating Text (SNT) which for the first time included dispute settlement as an integral part of the text. The articles treating navigation and over-flight, living resources, and marine pollution reflect, in most respects, widespread Conference review and a clear emerging consensus. Most of the articles on deep seabeds were proposed in a small group. The articles on scientific research and dispute settlement, however, reflect the personal views of the different Chairmen, and, therefore, do not reflect the negotiating process to the same degree as do the others.

The session, unlike previous sessions of the Conference, was significant in that the increased spirit of accommodation, coupled with serious negotiation on the part of the majorities of both developed and developing countries, prevailed. This atmosphere was in no small part due to the speech of the Secretary of State in New York on April 8, which stressed the urgency the United States and other countries attached to the spring session. The speech provided the ground work for agreement on realistic proposals meeting the legitimate concerns of both the developed and the developing world. The Secretary's proposals, aimed at bridging the gap in positions, were to a large degree incorporated in the revised text on the deep seabed.

The Conference agreed on a summer session in New York from August 2 - September 17, after considerable US lobbying with

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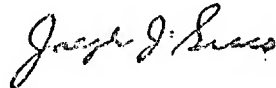
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the African group. This session is important in maintaining a sense of momentum and is vital if we are to get a treaty by mid-1977.

Our current assessment is that, given the relative brevity of the next session and the number and complexity of remaining issues, our optimum objective for the session will be substantive agreement on the contents of a treaty acceptable to us. The drafting committee would meet later to prepare a final text, followed by a further session for formal voting, and then a short ceremonial session to sign the treaty in Caracas in the first quarter of 1977. Should some substantive issues remain from the summer session, a further meeting could be called in early 1977, while still keeping to the Caracas signature goal of the first quarter of 1977. Should this be the case, it is more likely that signature would not occur until later in the spring or summer of 1977.

The NSC Interagency Task Force on the Law of the Sea is now examining in detail the present SNT, and we will be reviewing our positions in preparation for the next session. If required, we will send to you recommendations for new instructions before that session. We hope to complete most of this review within the next several weeks, since we need to proceed with intersessional discussions and negotiations which must commence by mid-July to help achieve our objectives at the next session.

Attached, as called for by NSDM 320, is a report prepared by Ambassador T. Vincent Learson, your Special Representative for the Law of the Sea Conference. Also attached are the reports of the Delegation to the New York session of the Conference and the revised SNT.



Joseph J. Sisco
Acting Chairman

Attachments: Report of the Special Representative
of the President
Classified Delegation Summary Report
Unclassified Delegation Report
Revised Single Negotiating Text

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MEMORANDUM FOR THE PRESIDENT

REPORT ON THE NEW YORK SESSION OF
LAW OF THE SEA CONFERENCE

I. Summary

We are now proceeding to examine in detail the new Single Negotiating Text that emerged from the New York LOS session and to develop our basic strategy. Thus this paper presents a preliminary assessment subject to revision. Our immediate objectives are to : 1) immediately review the new SNT and proceed to achieve agreement within the USG as to issues which require further major negotiating efforts; 2) determine whether new instructions might be needed; and 3) develop the best strategy for a successful second session now scheduled to be held in New York from August 2nd to September 17th.

We will need to develop in detail a comprehensive negotiating strategy for the intersessional period and for the summer session. A sustained, maximal effort will be necessary during the next few months if we are to achieve major breakthroughs during the next session and achieve our objective of substantive agreement on an LOS Treaty.

II. Basic Assessment of New York Session

The main achievements of the New York session are:

-- Significant movement towards our position in the Committee I (deep seabeds) text from the previous wholly unacceptable Geneva version.

-- Retention of generally satisfactory Committee II (Straits and Navigation) provisions with some useful changes on straits, tuna and archipelagoes.

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-- Satisfactory provisions on marine pollution.

-- Retention of a dispute settlement text and its emergence as an official major item in the Conference negotiations.

-- Agreement on a second substantive session in New York, August 2- September 17.

-- Finally, and perhaps most importantly, a sense among many delegations, indicated by the LDC agreement for a second session, that there has been some significant movement in the negotiations and that the necessary compromises are imminent.

The main elements on the negative side are:

-- The Committee I text, while an improvement, clearly still is unsatisfactory from our viewpoint on a number of items. (The key parts on decision-making remain as in the Geneva text, and have not yet even been negotiated, let alone resolved.)

-- The LDCs as a whole are unhappy with the seabed mining text, and believe it only reflects industrialized country views -- thus the real possibility exists that they will insist the text be revised in their direction leading to a major conflict in the next session.

-- The continuation in the present text of the legal status of the 200-mile Economic Zone as being "non-high seas", with potential problems for our security interests.

-- It will be difficult to improve the scientific research text under which coastal states consent is required for all scientific research in the Economic Zone, but may not be withheld for non-resource related research under specified conditions. Moreover, we face attempts by others to increase coastal state discretion in this regard.

-- Dispute settlement articles are less helpful in protecting our interests in fisheries and scientific research in the Economic Zone.

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-- The undesired Dependent Areas article remained in the text but in such a way as to diminish its status (See Annex).

On balance, the New York session produced important results from our viewpoint without yet obtaining all of the necessary basic compromises of positions which would make the treaty as a whole satisfactory and ratifiable. It did, however, considerably narrow differences and provide a sense, which we must foster, that the next session will achieve the basic overall agreement on outstanding issues.

III. Basic Intersessional Strategy

The immediate objectives for the NSC Interagency IOS Task Force are:

- A) develop a unified administration position on all outstanding issues;
- B) develop a basic international strategy for the USG for the remaining intersessional period and the Conference itself; and
- C) assure Congressional and public understanding and support for our objectives.

Our preliminary views on an effective strategy in each problem area are:

Metcalf Bill on Deep Sea Mining

An early priority upon us is to prevent passage of the proposed seabed mining bill which is now being considered in Congress. The Administration has presented a uniform position before Congress recommending at the very least no action be taken on passage until after the close of the summer session.

Administration Agreement on Policy and Revised Instructions

We are now undertaking a comprehensive and detailed analysis of the new Single Negotiating

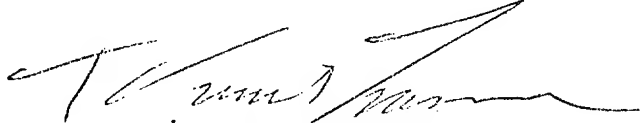
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Text (SNT). From this review, we will be able to pin-point problem areas and to propose remedies. Seabed mining issues will play a prominent role in this review and may face us with some difficult decisions, particularly if we conclude that we will be unable to achieve optimum results in this area.

Intersessional Negotiations

Once we decide where we want to go substantively, we will develop a detailed intersessional negotiating strategy aimed at obtaining support from foreign governments. For example, we have planned a meeting with the Group of 5 (France, Japan, UK, Soviet Union, and ourselves). We would also wish to touch base with the Committee I Secret Brazil Group, among others.



T. Vincent Learson

Special Representative of the President
for the Law of the Sea Conference

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ANNEX

DEPENDENT AREAS ("ARTICLE 136")

Article 136 of the Geneva text provides that resource rights of territories under foreign occupation or colonial domination, UN Trust Territories, and Areas administered by the UN, vest in the inhabitants of such areas to be exercised by them for their own benefit. The U.S. opposed the text, and to accommodate concerns of the Governor of Puerto Rico, proposed a new article that adds associated states, territories and commonwealths not fully independent to the list, and provides that coastal State resources rights in the areas referred to are to be exercised for the benefit of local inhabitants as prescribed by the UN Charter, international law, and applicable agreements. Cuba attacked the U.S. amendment because of the intent to expressly cover Puerto Rico, thus eliminating the colonial domination and foreign occupation argument with respect to Puerto Rico. Meanwhile, Arab States proposed adding territories of liberation movements recognized by the OAU or the Arab League to the original text. Previously, Israel made a strong private demarche to us against the entire article. Article 136 remained in the revised text, with only a change in a provision of lesser importance to us. However, it is now designated as a "transitional provision", not a numbered treaty article; and its propriety is implicitly questioned in the Chairman's introductory note. While we cannot feel entirely confident of the outcome, the stage is set to delete the article and place the issue either in the preamble to the treaty or in a Conference resolution.

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